



**BRIEF IN OPPOSITION TO THE PETITION FOR WRIT
OF CERTIORARI.**

I .

The petition for a writ of certiorari is defective in failing to contain several jurisdictional requisites. Thus it fails to comply with the provisions of Rule 38 of the Rules of this Court since it is not accompanied by a statement particularly disclosing the basis upon which it is contended that this Court has jurisdiction to review the judgment or decree in question (a jurisdictional statement such as is described in Rule 12 of the Rules of this Court). There is no reference

(a) to the statutory provision believed to sustain the jurisdiction of this Court, or

(b) to the Statute of the State or of the United States, the validity of which is involved, or

(c) to the date of the judgment or decree sought to be reviewed and the date upon which the petition for certiorari was presented.

There is no statement showing that the nature of the case and the rulings of the Court are such as to bring the case within the jurisdictional provisions relied on and citing the cases believed to sustain the jurisdiction.

The petition further fails to comply with Rule 38 of the Rules of this Court in that it does not contain any reasons relied on for the allowance of the writ. Thus, it is not shown by the petition that the holding of the Court below is in conflict with any applicable decision of another Circuit Court of Appeals or of this Court, nor is it shown

that there are any other reasons for the exercise of the jurisdiction of this Court such as are set forth in Rule 38, Paragraph 5(b) of the Rules of this Court.

The petition for certiorari (p. 4) refers to an alleged erroneous application by the Court below of the Virginia Traders' Act. The petition does not, however, set forth the provisions of the Virginia Traders' Act to which it refers, nor does it state in what particulars that provision was either applied, misapplied or even involved in this case. Furthermore, this point is now advanced for the first time, was not presented either to the District Court or to the Circuit Court of Appeals, was consequently not considered by either of those Courts and may not, therefore, now be used as a reason for the allowance of a writ of certiorari.

Since the petition for a writ of certiorari is defective in the jurisdictional requisites stated above, and in failing to contain the requirements prescribed by Rule 38 of the Rules of this Court, the petition should be denied.

II.

The petition for a writ of certiorari and the brief in support thereof make certain inaccurate statements of fact which are of such a nature that they cannot be overlooked.

The petition (p. 3) intimates and the brief (p. 19) states that the petition for consolidation was not filed until " * * * all the evidence was closed and the Master's report thereon filed, or about to be filed * * * " (brief, p. 19). The brief (p. 19) further charges that the question of consolidation was not raised in this case " * * * until the evidence was closed so that the Virginia creditors were denied the opportunity to present any evidence at all on the very point on which the Circuit Court based its decision". A

reference to the record in this case will disclose that in fact the petition for consolidation was filed, not only before the Master's report was made, but before the Master was appointed. It will disclose, further, that after the petition for consolidation was filed, due notice thereof was given to the Trustee and creditors of the Virginia corporation and answers were filed by them. The question of consolidation was fully argued by their counsel and heard and considered by the District Judge. On that application all parties had the opportunity to present additional evidence. These facts and the true chronology of events are set forth in the order of the District Judge which respondents have printed herewith as Appendix "A" of this brief.

III.

The petition for a writ of certiorari should be denied on the merits. It is unnecessary to restate herein the facts and the legal precedents involved. The decision of the Circuit Court of Appeals for the Fourth Circuit discloses that Court's careful consideration of all of the arguments raised and relied upon by petitioner.

The remedy which it granted is neither novel nor extraordinary in bankruptcy proceedings as may be seen from similar instances cited in the opinion of the Court below. "The theme of the Bankruptcy Act is equality of distribution." *Sampsell v. Imperial Paper & Color Corporation*, 313 U. S. 215, 220 (1941). The Circuit Court of Appeals, after weighing the equities in favor of the various creditors, in harmony with that theme granted the remedy of equal distribution by directing a consolidation of the two bankruptcy proceedings.

That the decision of the Court below is in conformance with the views of this Court may also be seen from the

decision of this Court in the recent case of *Prudence Realization Corporation v. Geist*, 62 Sup. Ct. 978, 86 L. Ed. 903, 908 (1942).

Conclusion.

For the foregoing reasons respondents respectfully submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Tip Top Tailors, Inc., Bankrupt.

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creditors.





Appendix A.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF VIRGINIA.

IN THE MATTER

of

TIP TOP TAILORS (VIRGINIA), INCOR-
PORATED,

Bankrupt.

In Bankruptcy
No. 15-769

Order.

Application having been made by Gerald D. Stone, trustee in bankruptcy of Tip Top Tailors, Inc. (Delaware) to consolidate the above proceedings with the proceeding pending in the United States District Court for the District of New Jersey in the matter of Tip Top Tailors, Inc. (Delaware); and it appearing to the court that a proof of claim has been filed in these proceedings by the said Gerald D. Stone, as trustee in bankruptcy as aforesaid in the sum of \$39,069.67 with Thomas B. Snead, Referee in Bankruptcy and that the objections filed to the allowance of said claim are still pending and undetermined by the said Referee in Bankruptcy; and it further appearing that three separate petitions to intervene in these proceedings having been filed by Meinhard-Greeff & Company, Inc. Crompton-Richmond Company, Inc., and John P. Maguire & Company, Inc., creditors of Tip Top Tailors, Inc. (Delaware), and the application to consolidate the said proceedings and the application to intervene on behalf of said creditors having been fully heard and argued before this Court on the adjourned return date of an order issued by